



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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B-178648

SEP 21 1973

The Honorable Torbert H. Macdonald, Chairman  
Subcommittee on Communications and Power  
Committee on Interstate and Foreign Commerce  
House of Representatives

Dear Mr. Chairman:

This refers to your letter of May 10, 1973, requesting that we investigate a news report concerning the dissemination to radio stations, by Federal executive departments, of prerecorded news releases, and specifically that we determine (1) how many departments and agencies provide prerecorded news reports; (2) the contents of the reports; and (3) whether any Federal statute has been violated.

In discussions with your staff, it was agreed, as confirmed by our letter of May 30, 1973, that we would examine into the practices of the major executive departments and agencies which provide prerecorded news reports, and would review the contents of the reports prepared by them during the period January 1, 1973, to May 31, 1973. We reviewed the activities of a total of 30 departments and agencies, and found that 18 of them provided prerecorded news reports to radio stations as part of their public information programs. Ten of the 18 agencies provided news reports daily, while the other eight agencies provided them on a less frequent basis. The agencies reviewed are listed in Attachment I.

Typically, the radio stations would obtain the prerecorded news reports by calling the agencies on designated telephone lines. The news reports could then be broadcast by a station as they were being received on the phone or could be recorded for broadcast at a later time. In addition, some agencies mailed tape recorded news reports to radio stations.

The 18 agencies which provided prerecorded news reports prepared 1,524 reports during the 5-month period covered by our review. We reviewed 1,462 of these reports. According to agency officials, recordings or transcripts of the remaining 62 news reports were no longer available at the time of our review.

We held discussions with responsible officials concerning the guidelines used in preparing the reports and obtained estimates of the costs of providing prerecorded news reports. Through our discussions with agency

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officials we found that the 18 agencies had not established definitive guidelines to govern the content of prerecorded news reports. Rather, the staffs in charge of the radio services either had been given no guidelines or had been given wide latitude to exercise their own judgment as to what was timely and newsworthy in selecting items for recording.

The prerecorded news reports we reviewed covered a diverse range of subjects. In most cases the reports contained a discussion of a program or activity within the agency's area of responsibility. The reports often contained excerpts from speeches or commentaries by high-ranking agency officials.

We obtained, from officials of those ten agencies that provided daily prerecorded news reports, estimates of the cost of providing the news services. These are set forth in Attachment II, and include major equipment costs and annual operating costs.

In view of the use of appropriated funds to finance the dissemination of the prerecorded news reports, and as agreed with your staff, we analyzed the content of the 1,462 reports available during the 3-month period covered by our review to determine if section 608(a) of the Treasury, Postal Service, and General Government Appropriation Act, 1973, approved July 13, 1972, Pub. L. 92-351, 86 Stat. 471, or any other statute, had been violated. Section 608(a) of the act of July 13, 1972, provides that:

"No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress."

We consider that in general section 608(a) is not violated by the dissemination by an agency of general comment on, or discussion of, pending legislation. This view is, we believe, necessarily implied by consideration of the nature of those public information functions of an agency which are legitimate and lawful. Thus, public officials may with propriety report on the activities of their agencies, may expound to the public the policies of those agencies, and of the administration of which they are members, and may likewise offer rebuttal to attacks on those policies. Expenditure of appropriated funds for dissemination of information in those categories is hence lawful. But it must be recognized that, to the extent to which the policy of an agency or administration is embodied in pending legislation, discussion by officials of that policy will necessarily, either explicitly or by implication, refer to such legislation, and will presumably be either in support of that legislation or in opposition to other non-administration

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legislation, or both. An interpretation of section 608(a) which strictly prohibited expenditures of appropriated funds for dissemination of views on pending legislation would consequently preclude virtually any comment by officials on administration or agency policy, a result which, as noted above, we do not believe was intended.

We conclude, therefore, that the Congress did not intend, by the enactment of section 608(a) and like measures, to preclude all expression by agency officials of views on pending legislation. Rather, the prohibition of section 608(a) in our view applies only to expenditures involving direct appeals addressed to the public suggesting that they contact Members of Congress and indicate their support of or opposition to pending legislation, i.e., appeals to members of the public for them in turn to urge their representatives to vote in a particular manner. The foregoing general considerations form the basis for our determination in any given instance of whether there has been a violation of section 608(a).

We note further, in this regard, that the statutory injunction of section 608(a) is too vague to be susceptible of definitively drawn guidelines which would clearly delineate unauthorized types of expenditures. Consequently, we do not consider it appropriate to override administrative determinations of propriety with respect to any specific action, except where the ultimate aim of such action is so palpably designed to support or defeat pending legislation in the manner described above as to compel the conclusion that the administrative determinations are unreasonable in the face of the statutory prohibition.

The following discussion of the materials disseminated by the various agencies through their broadcast news services and examined by us is based on this interpretation of section 608(a). We have found, in our examination of the materials thus made available by the agencies, that most of the news releases do not violate section 608(a) either because they are clearly in the category of exposition of administration policy or because, although they discuss pending legislation, they do not do so in terms which are clearly designed to suggest that the public contact Members of Congress to influence their vote on pending legislation. But in our view there were ten instances of violations of section 608(a) of the act of July 13, 1972: one by the Department of Transportation; one by the Department of Housing and Urban Development (HUD); six by the Department of Labor; and two by the Department of Commerce. Details of each of these violations are set forth below. The following ten reports, in our opinion, are in violation of section 608(a) because they are patently designed to influence the general public to contact Members of Congress to urge the members to vote for or against (i.e., support or defeat) pending legislation:

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1) The following statement by the Deputy Assistant Secretary of Labor and Administrator of the Occupational Safety and Health Administration was available through the Labor Department broadcast news service on March 28, 1973:

"\* \* \* What the President has proposed is a budget of restraint and reform. It promises prosperity without inflation.

"If the President's position of resisting higher taxes resulting from big spending is to be upheld, the people need to be heard. The voice of America can reach Capitol Hill and can be a positive persuader."

The inescapable import of this is that the people are exhorted to contact their elected representatives and let them know that they favor the President's budget, so that those representatives will vote for the legislation embodying that budget. In our view this is publicity or propaganda designed to support or defeat legislation pending before Congress, within the meaning of section 608(a).†

2) On March 19, 1973, the following statement by the Federal Railroad Administrator was available through the Department of Transportation broadcast news service:

"\* \* \* If we are going to have economic stability and fiscal responsibility, we must all support the President's budget program—and let Congress know we support it."

This again urges listeners to make known to Congress their support for the President's budget, which is embodied in pending legislation.

3) The following statement by the Assistant Secretary of Labor for Occupational Safety and Health was available on April 5, 1973:

"At the moment there is a struggle going on in Washington. Its outcome will vitally affect the American taxpayer. Congress is under pressure to expand President Nixon's budget of restraint.

"Many of the additions to the budget some members in Congress want to make would only give new life to old and outworn programs. It is going to take a good deal of effort to assure success for the Administration's responsible budget.

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"With the public's help, government spending can be held down. The people must tell their elected representatives they are no longer willing to pay for bigger government that is not necessarily better government."

4) A statement by the Deputy Under Secretary of Labor, available on April 9, 1973, was as follows:

"The consequences of breaching the President's budget ceiling are inevitable and brutal. As a matter of simple arithmetic, an increase in government expenditures requires either an increase in taxation or a larger Federal deficit or both. If we are unwilling to accept increases in taxes--and most of us are unwilling--the consequence of increased government spending will be a strengthening of the always dangerous, always cruel inflationary forces. If the ceiling is breached, we can expect rising prices, rising interest rates, rising imports, decreasing exports, and other distortions in our economic processes which will threaten our living standards. If you fear inflation--as you should--this is not the time to be silent--contact your congressman."

5) The following statement by the Deputy Assistant Secretary of Labor was available on April 5, 1973:

"The Occupational Safety and Health Act of 1970 is a good example of President Nixon's emphasis upon government decentralization. Allowing the States to develop their own safety and health programs plans under Federal guidance should help stem the tide of rising Federal expenditures and control."

"Those in Congress who resist this effort by calling for more Federal outlays are asking the American workingman to bear the brunt of heavier taxes and renewed inflation. The public must let these big spenders know that it supports the President in the fight to hold down Federal spending."

6) The following statement by the Deputy Under Secretary of Labor was available on April 7-8, 1973:

"A highly significant confrontation is now developing between the President and the Congress on each of the big spending bills. The President knows that if his budget ceiling is not adhered to, either taxes or the Federal deficit must rise. If this happens, the American public must

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pay in the form of either higher taxes or higher prices or both. Because of this, the President has already vetoed two of these spending bills. You can help the President in this vital effort by letting your congressman know where you stand. If you are willing to pay higher prices and higher taxes, let him know. But if you oppose higher prices and higher taxes, let him know that too."

Some discussion of our conclusion with respect to this statement and several similar ones, noted hereafter, is necessary. While the last statement, and the four following statements, advise the listener to make his views concerning pending legislation known to his representative in Congress, the tenor of each statement makes it clear that the statement is intended to convince the listener to present to his Congressman the view espoused in the statement and thus support or defeat pending legislation. Hence these statements are also in violation of section 608(a).

7) The following statement, available on April 13, 1973, was made by the Assistant Secretary of Labor:

"President Nixon has proposed a sensible budget that places a tight lid on the runaway spending that hampered the nation in the 1960s. It calls for pruning those expensive programs that don't work, so we can focus our efforts on those programs that do work. It will help us achieve the first peacetime prosperity without inflation in nearly twenty years.

"If we don't slow down Federal spending, if the President's budgetary cuts are thwarted, we face a 15-percent increase in income taxes and more inflation. I don't think any American wants this. But, in the final analysis the responsibility rests with the voters and the taxpayers. They must let the Congress know how they feel on this critical issue."

8 and 9) The broadcast news service of the Department of Commerce made the following statement by the Secretary of Commerce available on two occasions, March 21 and again on March 30, 1973:

"The opposition to President Nixon's budget is not coming from the people. The people, as we have seen are benefiting from the largest human resources budget in our Nation's history. The display of anguish originates from the poverty middlemen. They see their roles as well-paid,

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publicly financed, 'advisors to the poor' being diminished. President Nixon has taken his stand. We have heard from those who oppose his effort. Now the people must make their choice, and they must make their choice known to their elected representatives in Congress."

10) The following statement by the Secretary of Housing and Urban Development was available on March 29, 1973:

"All those unneeded new bills headed for the President's desk from Congress—all the unworthy Federal programs and projects—are guns pointed at the heads of American taxpayers. Or more accurately, they are pointed at the income of the taxpayers—ready to shoot them down. \* \* \* We live in historic times. The question is whether \* \* \* as a Nation \* \* \* we will take advantage of the opportunity President Nixon's vision and determination afford us. Right now, Congress is getting all kinds of letters from special interest groups. Those groups are pleading their own selfish causes. I think Congress should hear from all Americans on what the President is trying to do whatever their views may be. And I say that regardless of whether those who contact their Congressmen happen to be in agreement with me."

As indicated above, this is clearly an attempt to influence pending legislation in violation of section 608(a). The violation, as noted above, is not cured by the disclaimer of intent to influence that legislation in a particular fashion.

With regard to the question of whether any Federal statute has been violated, there is also for consideration section 701 of the Departments of State, Justice, and Commerce, The Judiciary, and Related Agencies Appropriation Act, 1973, approved October 25, 1972, Pub. L. 92-544, 86 Stat. 1109. Section 701 provides that—

"No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress."

We have generally considered, in interpreting other statutes using essentially the same language as section 701, that this language is intended to prevent publicity of a nature tending to emphasize the importance of the agency or activity in question. 31 Comp. Gen. 311 (1952). We have not found in the Commerce Department or State Department material examined any instances of such self-aggrandizing uses of the broadcast news service. None of the other agencies examined are subject to section 701.

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We note further that section 1913 of title 18, United States Code, provides, in pertinent part, that:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation."

Whether expenditure of appropriated funds for any of the recorded news announcements under consideration herein is a violation of 18 U.S.C. 1913 is properly a matter for consideration by the Department of Justice since it provides for penal sanctions and, consequently, it would not be appropriate for us to express an opinion thereon.

Finally, with respect to the cost of the broadcast services, generally we found that six agencies provided their prerecorded news services over conventional telephone lines which require the caller to pay the toll, including long-distance charges. Three agencies--the Department of Transportation (DOT), the Cost of Living Council (COLC), and HUD--used both conventional and toll-free wide area telephone service (WATS) lines, while the Environmental Protection Agency (EPA) used WATS lines exclusively. The cost incurred in providing toll-free service to radio stations varied considerably among the agencies as shown in the table below:

Agency	Number of WATS lines	Total annual cost for WATS lines	Average annual cost per WATS line	Average number of calls received per day
HUD	2	\$ 8,202	\$ 4,101	161
DOT	2	7,800	3,900	102
COLC	3	35,808	11,936	117
EPA	3	27,808	9,269	228

(Amounts shown for EPA were projected by GAO based on contract costs incurred during the first 13 weeks the service was provided.)

DOT and HUD used "measured" WATS lines which enabled the agencies to use the WATS lines for a given number of hours at a fixed monthly charge, and to pay an additional charge for each additional hour the WATS lines were used. COLC and EPA each used a "full-time" WATS line in addition to measured WATS lines. Full-time WATS lines have no limits on their usage, but they cost considerably more than measured WATS lines.



In view of the cost savings possible through the use of conventional telephone lines, we believe that HUD, DOT, COLC and EPA should reevaluate the need for providing toll-free telephone service. If it is found that toll-free service is needed, COLC and EPA should reevaluate the need for full-time WATS lines.

The action to be taken by our Office with respect to the expenditures of appropriated funds in violation of law is limited to recovery of the amounts illegally expended. While appropriated funds were used in connection with the preparation of news reports which were part of an effort to influence directly pending legislation in the manner described, the amount expended for each violation would have been relatively small and commingled with proper expenditures. In view of the small amounts involved, the difficulty in determining the exact amount expended illegally as well as the identity of any particular voucher involved, we believe that it would be inappropriate for us to attempt to effect their recovery.

As you are aware, Senator Proxmire has also asked that we examine into the practices of the Federal executive departments in providing pre-recorded news reports to radio stations. As agreed with the Senator and you, we will transmit to the Senator the identical information contained in this report, after you have had an opportunity to examine it. We plan to make no further distribution of the report unless copies are specifically requested, and then distribution will be made only after your approval has been obtained or the report has been released publicly.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General  
of the United States

Enclosures

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## ATTACHMENT I

FEDERAL AGENCIES INCLUDED IN  
REVIEW OF GOVERNMENT SUPPLIED NEWS STORIES  
JANUARY 1 - MAY 31, 1973

RADIO NEWS SERVICE PROVIDED DAILY

1. Department of Agriculture
2. Department of Commerce
3. Department of Health, Education, and Welfare
4. Department of Housing and Urban Development
5. Department of the Interior
6. Department of Labor
7. Department of Transportation
8. Department of the Treasury
9. Cost of Living Council
10. Environmental Protection Agency

RADIO NEWS SERVICE PROVIDED PERIODICALLY

1. Department of Defense
2. Atomic Energy Commission
3. National Aeronautics and Space Administration
4. Small Business Administration
5. United States Postal Service
6. Department of State
7. General Services Administration
8. Veterans Administration

NO RADIO NEWS SERVICE PROVIDED

1. Department of Justice
2. Civil Aeronautics Board
3. Federal Communications Commission
4. Federal Maritime Commission
5. Federal Power Commission
6. Federal Trade Commission
7. Interstate Commerce Commission
8. National Science Foundation
9. Office of Economic Opportunity
10. Securities and Exchange Commission
11. United States Civil Service Commission
12. United States Information Agency

TELEPHONE  
Toll charges  
New classification by Government

APPROPRIATIONS  
Availability  
Publicity and programs  
Pending legislation

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ATTACHMENT II

APPROPRIATIONS  
Availability  
Publicity and programs  
Self-administered by agencies

**ESTIMATED COST OF PROVIDING  
RADIO NEWS SERVICE**

ESTIMATED ANNUAL OPERATING COSTS

AGENCY	MAJOR EQUIPMENT COSTS	SALARIES	TELEPHONE LINES	TOTAL ANNUAL 1/ COSTS
Department of Agriculture	\$ 5,774	\$ 63,350	\$ 1,491	\$ 64,841
Department of Commerce	4,922	40,433	255	40,688
Department of Health, Education, and Welfare	13,829	23,088	960	24,048
Department of Housing and Urban Development	6,267	21,014	8,501	29,515
Department of the Interior	4,016	17,644	156	17,800
Department of Labor	16,184	61,266	1,212	62,478
Department of Transportation	6,444	23,035	8,220	31,255
Department of the Treasury	1,709	15,320	240	15,560
Cost of Living Council	2,754	4,200	36,103	40,303
Environmental Protection Agency 2/	—	—	6,952	13,776

- 1/ Total annual costs do not include the costs of expendable supplies or the cost of mailing tapes to radio stations.
- 2/ Prerecorded radio news services are performed for EPA by a contractor. The amounts shown are the costs incurred under the contract for the first 13 weeks.